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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,137	09/27/2004	Jeffrey S Lockwood	HLR.0107P-US (KCIN:083US)	1944
66/404 7590 06/24/2010 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVENUE SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
REICHLE, KARIN M				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
06/24/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/509,137

**Applicant(s)**

LOCKWOOD ET AL.

**Examiner**

Karin M. Reichle

**Art Unit**

3761

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 09 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-11.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

Continuation of 3. NOTE: The proposed amendments to claims, e.g. claim 8, i.e. "a majority", i.e. more than 50%, raise new considerations with regard to scope of the claims. First, such amendment to claim 8 is not the same as "substantially all" as previously set forth. Second, the original specification does not appear to set forth "a majority". It is noted that Applicant did not set forth the portion of the specification relied upon for such language. Note MPEP 714.02, second to last paragraph. Therefore the proposed amendments are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. With regard to the terminology "non-porous", Applicant's arguments are deemed not persuasive because they are narrower than the prior art (e.g., note the foam discussed at page 1, lines 23-28 is open cell foam, not all foams, see Applicant's remarks at page 9, last 3 lines), narrower than the claim language (e.g. note that page 5, lines 15-27 discuss "nonporous and non-foam-like" which is not what is claimed, see Applicant's remarks at page 10, lines 9-11), narrower than all the definitions (e.g. see the definition provided in the last Office action, i.e. porous is defined as that which permits passage and Applicant's claimed opening permits passage, i.e. "extends through", see Applicant's remarks at page 10, last paragraph and page 11, first paragraph) and the remarks themselves (e.g. "at least one discrete opening" includes "innumerable" openings, i.e. pores, and pores of the packing 618, see page 13 of remarks at Figure, i.e. not "undefined", see page 11, first full paragraph of remarks). Finally note Examiner's similarly presented positions in the Office Action of 6-22-07 (e.g. with regard to similar language, i.e. "nonporous", of the claims presented 4-2007) and the Office action of 6-09 (e.g., see paragraph 3 thereof).